

The burden of proof in the disputes for unjust enrichment

Abstract

This diploma thesis deals with the institute of the burden of proof. Its aim is to analyse the distribution of the burden of proof in disputes for unjust enrichment. The thesis consists of an introduction, four main chapters, which are further internally divided and the conclusion.

The introduction is focused mainly on the reasons of author's choice of the topic.

The first chapter contains the general characteristics and interpretation of key concepts as well as related institutes, whose basic knowledge will be a key to other parts of the text. It explains the differences between the concepts of proof, counter-proof and objection. It then analyses the standard of proof needed to prove certain facts. It also describes the state of non liquet and analyses the individual procedural obligations and burdens of the parties.

The subject of the second chapter of the thesis is the term of the burden of proof, which can be divided into the objective and subjective burden of proof. The subjective burden of proof can be further subdivided into the abstract and concrete burden of proof. The chapter goes on to analyse selected theories of distribution of the burden of proof, while not neglecting the negative theory of proof. In the partial conclusion, thesis inclines to the Rosenberg's theory of norms analysis. Based on this theory, thesis formulates a model of distribution of the burden of proof in disputes for unjust enrichment.

The focus of the thesis is on the third, the most extensive chapter, which contains of the application of above mentioned rules on model disputes for unjust enrichment. After the general characteristic of the unjust enrichment institute, constituent elements are discussed. Theory of norms analysis is applied to material legal regulation. In model disputes, thesis demonstrates the distribution of the burden of proof between the parties of the dispute.

The last, fourth chapter deals with the intent of the new civil law order. In this chapter, attention is focused on explicitly setting the duty of honesty as well as the division of the burden of proof between the parties to the dispute into the forthcoming procedural legal regulation.

The conclusion of the thesis points to the different views of the enriched and deprived and the issue of bearing the burden of proof in disputes for unjust enrichment. It also assesses the usefulness of work in the future for the effectiveness of the new civil procedure.

Keywords: burden of proof, unjust enrichment, distribution of burden of proof